

**No. PD-0477-19**

IN THE  
TEXAS COURT OF CRIMINAL APPEALS

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DEANA WILLIAMSON, CLERK

**THE STATE OF TEXAS,  
PETITIONER,**

**v.**

**ISSAC WILLIAMS,  
RESPONDENT.**

ON PDR FROM THE FOURTH  
COURT OF APPEALS

**AMICUS CURIAE BRIEF BY DISTRICT ATTORNEY FOR THE  
105<sup>TH</sup> JUDICIAL DISTRICT OF TEXAS**

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## **STATEMENT OF COMPLIANCE WITH TEX. R. APP. P. 11**

The present amicus curiae brief is filed by the District Attorney's Office for the 105<sup>th</sup> Judicial District of Texas, in accordance with the requirements of Texas Rule of Appellate Procedure 11. No fee has been paid or will be paid for the preparation of this brief. The certificate of service attached to the back page of this brief certifies that copies have been mailed to all parties.

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NO. PD-0477-19  
(Appellate Court Cause No. 04-17-00815-CR)

|                     |   |                           |
|---------------------|---|---------------------------|
| THE STATE OF TEXAS, | § | IN THE                    |
| Petitioner,         | § |                           |
|                     | § |                           |
| V.                  | § | COURT OF CRIMINAL APPEALS |
|                     | § |                           |
| ISSAC WILLIAMS,     | § |                           |
| Respondent.         | § | OF TEXAS                  |

**AMICUS CURIEA’S BRIEF**

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

**ARGUMENT**

**Issue 1. Did Williams preserve his request for the lesser-included offense of human trafficking when he failed to identify any evidence supporting this request and denied committing any offense?**

In order to be entitled to a lesser-included offense instruction when the elements of the requested lesser offense fit within the elements of the charged offense, the defendant must also show that there is affirmative evidence directly germane to the lesser-included offense that negates or rebuts an element of the greater offense and from which a rational jury could find the defendant guilty of only the lesser offense. *See Ritcherson v. State*, 568 S.W.3d 667, 670–71 (Tex. Crim. App. 2018).

In the present case, the defendant asserted that there was such affirmative evidence in the record, but failed to identify the nature of such evidence or where it could be found.

The question presented in the present appeal is whether when the defendant simply points to a requested lesser-included offense that qualifies under the elements test, the burden effectively shifts to the trial court to then sift through all of the evidence presented at trial to determine if anything germane would support submission of that offense under the rational alternative test. Or, whether the defendant retains some burden to point to the germane evidence in question and explain why it makes the lesser offense a rational alternative to the charged offense.

This Court has generally held that, in order to preserve error on an objection, “a party need only let the trial court know what he wants and *why he feels himself entitled to it* clearly enough for the judge to understand him.” *Vasquez v. State*, 483 S.W.3d 550, 554 (Tex. Crim. App. 2016) (emphasis added). Amicus would argue that the defendant has not adequately let the trial court know why he feels, or *is*, entitled to a requested lesser-included offense instruction until he has pointed to at least some evidence that would support the rational alternative test.

On occasion, this Court has recognized with regard to evidentiary error the “party responsibility” notion of error preservation, under which the party complaining on appeal must “have done everything necessary to bring to the judge's attention the evidence rule in question and its precise and

proper application to the evidence in question.” *Reyna v. State*, 168 S.W.3d 173, 177 (Tex. Crim. App. 2005) (quoting 1 Stephen Goode, *et al.*, Texas Practice: Guide to the Texas Rules of Evidence: Civil and Criminal § 103.2 (2d ed.1993)); *see also Martinez v. State*, 91 S.W.3d 331, 335–36 (Tex. Crim. App. 2002). The same considerations should apply to error preservation with regard to a requested lesser-included offense. It should be the defendant’s responsibility to have done everything necessary not only to bring to the trial court’s attention the correlation of elements, but also the “precise and proper application” of the rational alternative test to the underlying evidence that would justify submitting the lesser-included offense.

Placing such a duty on the defendant accords with practical considerations as well. As the charged offense is the only one obviously on the table until the close of the evidence, and the defense may legitimately postpone its intent to ask for a lesser offense until the charge conference, the defendant is logically in the best position to have been paying attention to that germane evidence as it was developed at trial, and is likewise in the best position to point to it at the charge conference as a justification for the instruction it desires.

Absent such a burden on the defendant, the trial judge is in a

precarious position of having to quickly assess the state of the evidence in light of an offense that has not before been formally presented to him or her as an alternative to the charged offense.

Amicus argues that the burden to point to such evidence should be placed on the defendant, and that the defendant in the present case failed to carry that burden and thus failed to preserve error concerning the omission of the lesser-included offense instruction.

### **CONCLUSION**

The District Attorney's Office for the 105<sup>th</sup> Judicial District of Texas submits the foregoing Amicus Curiae Brief for the Court's consideration in the present case.

Respectfully submitted,

/s/ *Douglas K. Norman*

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### **RULE 9.4 (i) CERTIFICATION**

In compliance with Texas Rule of Appellate Procedure 9.4(i)(3), I certify that the number of words in this brief, excluding those matters listed in Rule 9.4(i)(1), is 702.

/s/ *Douglas K. Norman*

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Douglas K. Norman

### **CERTIFICATE OF SERVICE**

This is to certify that copies of this brief were e-served on January 21, 2020, on the attorney for Mr. Issac Williams, Ms. Dayna Jones, at DAYNAJ33@GMAIL.COM, the attorney for the State, Mr. Nathan Morey, at [Nathan.morey@bexar.org](mailto:Nathan.morey@bexar.org), and the State Prosecuting Attorney, at Stacey.Soule@SPA.texas.gov.

/s/ *Douglas K. Norman*

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